

REMARKS/ARGUMENTS

Applicant has reviewed and considered the non-final Office Action mailed on April 26, 2007, and the references cited therewith.

Claims 1-10 are now pending in this application. A complete listing of the claims are provided for the convenience of the Examiner.

Applicant traverses the rejections and, based on the remarks below, respectfully requests reconsideration and allowance of claims 1-10.

Claim Rejections – 35 U.S.C. § 103

Claim 1 is rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 4,382,441 ("Svedman"). Claim 1 is allowable, however, because Svedman does not teach or suggest all of the claimed limitations. Among other things, Svedman does not teach or suggest a negative pressure therapy device that comprises "a fluid compositional sensing device." The Office Action concedes that Svedman is deficient, but argues that it would be obvious to one of ordinary skill in the art to substitute a fluid compositional sensing device for the temperature sensor taught by Svedman.

The combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results, *KSR Int'l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1739 (2007), but most, if not all, inventions arise from a combination of old elements. *In re Kotzab*, 217 F.3d 1365, 1369 (Fed. Cir. 2000) (citing *In re Rouffet*, 149 F.3d at 1357). "Thus, every element of a claimed invention may often be found in the prior art" and the Examiner must consider the claimed invention as a whole. *Id.* at 1369-70; accord *MPEP* § 2141.02. "[I]dentification in the prior art of each individual part claimed is insufficient to defeat patentability of the whole claimed invention." *Kotzab*, 217 F.3d at 1370. An examiner may not evaluate the invention "part by part," using the invention as a "roadmap to find its prior art components." *Princeton Biochemicals, Inc. v. Beckman Coulter, Inc.*, 411 F.3d 1332, 1337 (Fed. Cir. 2005). Hindsight reconstruction is impermissible. *Rouffet*, 149 F.3d at 1357-58; *In re Fitch*, 972 F.2d 1260, 1266 (Fed. Cir. 1992).

Moreover, an Examiner must explicitly determine the level of ordinary skill in the art and the difference between the prior art and the claims at issue before rejecting a

claim as obvious. See *KSR*, 127 S. Ct. at 1734. An alleged reason for combining or modifying the teaching of the prior art must be supported by articulated reasoning with some "rational underpinning" to support the legal conclusion of obviousness. See *KSR*, 127 S. Ct. at 1741 (quoting *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006)). Broad conclusory statements of suggestion or motivation standing alone are not sufficient. *Id.*

Here, the Applicant has described a device that provides a means for diagnosing the nature or specific type of infection present at a wound site during the utilization of an airtight dressing, among other things. (See, e.g., Spec. at para. 13.) As claimed in claim 1, the device uses a fluid compositional sensing device to determine the compositional characteristics of wound fluid. In contrast, the temperature sensor of Svedman is used only to regulate the application of heat to a fluid, and Svedman teaches only that heat may be applied to the fluid to therapeutically temper tissue. The Office Action posits that a temperature increase signals the presence of bacterial infection, but this position is simply inaccurate to the extent that it suggests that a temperature increase *always* signals the presence of bacterial infection. Even Svedman indicates that an increase in temperature merely indicates that too much heat is being applied for a desired treatment. Svedman is completely devoid of any diagnostic application, i.e. identifying the composition of a fluid. One of ordinary skill in the art would have no apparent reason to look to Svedman to provide a means for diagnosing unfiltered wound fluid composition. The Office Action's broad, conclusory statements to the contrary are legally and factually deficient. Moreover, the Office Action provides no evidence of the level of ordinary skill in the art as of the date this Application was filed.

Accordingly, the rejections of claim 1 and its dependents are clearly in error, and the Applicant respectfully requests that the Examiner withdraw the rejections. Independent claim 6 and its dependents should also be allowed for similar or analogous reasons.

CONCLUSION

If a Petition for Extension of Time under 37 C.F.R. 1.136(a) is required, the petition is herewith made. The Commissioner is authorized to charge any fees that may be required, or credit any overpayment made with this Office Action, to Deposit Account Number 50-0326.

In light of all the foregoing, believing that all things raised in the Office Action have been addressed, Applicant respectfully requests reconsideration of the prior rejections and objections, as well as allowance of the claims and passage of the application to issue. If the Examiner would care to discuss any remaining matters by phone, Applicant invites the Examiner to contact the undersigned at 214.758.6641.

Respectfully submitted,



Robert C. Hilton
Reg. No.: 47,649

Date: 7/18/07

For Applicants:
Kinetic Concepts, Inc.
Legal Department – Intellectual Property
P.O. Box 659508
San Antonio, Texas 78265-9508
Telephone: 210.255.6855
Facsimile: 210.255.6969